

**TENNESSEE DEPARTMENT OF REVENUE**  
**LETTER RULING # 00-08**

**IMPORTANT NOTICE: PURSUANT TO SECTION 59 OF PUBLIC CHAPTER 982 OF THE PUBLIC ACTS OF 2000, AN EXEMPTION FROM FRANCHISE, EXCISE TAX HAS BEEN ENACTED FOR CERTAIN FAMILY OWNED NON-CORPORATE ENTITIES WHERE SUBSTANTIALLY ALL ACTIVITY OF THE ENTITY IS THE PRODUCTION OF PASSIVE INVESTMENT INCOME. PLEASE REFER TO PUBLIC CHAPTER 982 [T.C.A. § 67-4-2008(8)] FOR THE FORMAL TEXT OF THE STATUTE.**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Application of Tennessee's franchise, excise taxes to a Tennessee limited partnership that is in the business of owning securities for its own account, where the limited partnership's entire portfolio of investments is held outside of Tennessee.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and

(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a revocation of the ruling must inure to the taxpayer's detriment.

### **FACTS**

[TAXPAYER] is a limited partnership organized under the Tennessee Revised Uniform Limited Partnership Act. The business of the Partnership is owning securities for its account and not as a broker or for resale to customers.

The limited partners are a widow, a trust for her benefit, her only child, and a charitable organization under section 501(c) of the Internal Revenue Code. The general partner is the child. All partners are domiciled in Tennessee.

The Partnership's portfolio consists of varying percentages of stocks (both domestic and foreign), interests in real estate investment trusts, Tennessee municipal bonds, and cash or cash equivalents. Specifically, the Partnership owns shares in [NUMBER] mutual funds, shares in [NUMBER] money market funds, and [NUMBER] Tennessee municipal bonds. All Partnership property is in book-entry form.

The Partnership has an account with a stockbroker that is organized and domiciled outside of Tennessee. The stockbroker holds all of the Partnership property, receives and invests Partnership income, and keeps the records of the Partnership. The taxpayer states that all of these activities are performed in [STATE OTHER THAN TENNESSEE] and are directed and managed from [STATE OTHER THAN TENNESSEE]. The stockbroker provides detailed monthly account statements to the Partnership. The Partnership uses the monthly account statements in the conduct of its business.

In tax years beginning on or after January 1, 2000, the only activities of the Partnership are holding partnership property, receiving and investing partnership income, and record keeping.

### **QUESTION**

Whether the Partnership is "doing business in Tennessee?"

### **RULING**

Yes.

### **ANALYSIS**

#### **THE LIMITED PARTNERSHIP IS DOING BUSINESS IN TENNESSEE FOR PURPOSES OF T.C.A. § 67-4-2004(7)(A).**

Tennessee franchise and excise taxes are imposed on "persons" or "taxpayers" for the privilege of doing business in Tennessee. T.C.A. §§ 67-4-2005 and 67-4-2104. The

excise tax is levied at the rate of six percent (6%) of the taxpayer's net earnings (T.C.A. 67-4-2007(a)), and the franchise tax is based upon the greater of the taxpayer's net worth or the actual value of the property owned, or property used, in Tennessee, excluding exempt inventory.

A "taxpayer" or "person" is defined by T.C.A. § 67-4-2004(16) as follows:

"Person" or "taxpayer" means every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, limited partnership, cooperative, joint stock association, business trust, regulated investment company, real estate investment trust, state chartered or national bank, state-chartered or federally-chartered savings and loan association, and any other organization or entity engaged in business; ... .

As a Tennessee limited partnership, the Partnership is, under the terms of 67-4-2004(16), a "person" or "taxpayer" for franchise and excise tax purposes. Therefore, absent an exemption, the Partnership is subject to Tennessee's franchise and excise taxes if it is doing business in Tennessee in accordance with T.C.A. § 67-4 2004(7).

T.C.A. § 67-4-2004(7)(A) defines "doing business in Tennessee" as follows:

"Doing business in Tennessee" or "doing business within this state" means any activity purposefully engaged in, within Tennessee, by a person with the object of gain, benefit, or advantage, consistent with the intent of the general assembly to subject such persons to the Tennessee franchise/excise tax to the extent permitted by the United States Constitution and the Constitution of Tennessee.

The Partnership is a Tennessee partnership that consists of partners who are all domiciled in Tennessee. The facts reveal that although it is asserted that all the business of the Partnership is performed in and directed and managed from [STATE OTHER THAN TENNESSEE], that is not the case. The detailed monthly account statements that the [STATE OTHER THAN TENNESSEE] broker provides to the Partnership in Tennessee each month evidence that the business of the Partnership is being conducted in Tennessee. While it may be true that the partnership's portfolio of investments is located in [STATE OTHER THAN TENNESSEE], the stockbroker is merely an out-of-state commission broker with whom the Partnership does business and who provides services for the Partnership. Tennessee's franchise and excise taxes cannot be escaped by simply engaging out-of-state brokers. The reverse is true as well; i.e., if an out-of-state limited partnership hired a Tennessee stock broker to do activities similar to those that the Partnership engaged the [STATE OTHER THAN TENNESSEE] broker to do, the out-of-state limited partnership would not, without more, be subject to Tennessee franchise, excise taxation.

The fact that the [STATE OTHER THAN TENNESSEE] stockbroker provides the Partnership with detailed monthly account statements coupled with the fact that the

Partnership uses the monthly account statements in the conduct of its business is dispositive of the fact that the business of the Partnership is managed and directed from Tennessee. Thus, the Partnership is engaging in business activities in Tennessee with the object of gain, benefit or advantage.

Steven B. McCloud  
Tax Counsel

APPROVED: Ruth E. Johnson  
Commissioner

DATE: 3/30/00